



# Smithsonian Institution

Lawrence M. Small  
Secretary

December 1, 2006

Robin M. Nazzaro  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
Washington, DC 20548

Re: GAO's Report on Smithsonian Institution's Contract with Showtime

Dear Ms. Nazzaro:

The Smithsonian Institution is pleased to receive this report from the United States Government Accountability Office (GAO) on the Institution's contract with Showtime Networks Inc (Showtime). We appreciate the time that GAO and its staff took to understand this complicated issue and to approach this topic in a fair and unbiased way.

## Overview of Response: Smithsonian Will Implement GAO Recommendations

Aside from the few exceptions discussed below, we believe the report accurately describes the events surrounding the negotiation and execution of the contracts with Showtime, as well as the establishment and implementation of the new filming policies that this contract necessitates. In addition, we agree with both of GAO's "Recommendations for Executive Action" detailed at the end of its report: First, although we currently document decisions on filming requests, we will document them in more detail for the reasons you suggest. Second, we will update our website to provide filmmakers and other interested parties with more information about what the contract means for filmmakers.

## Smithsonian Statement on Creation of Smithsonian Networks/Smithsonian On Demand

The Smithsonian Board of Regents, which governs and administers the Smithsonian Institution, is guided in its decisions by the mission described by James Smithson in his will — "for the increase and diffusion of knowledge." Since its inception, the Institution has sought ways to further this mission by bringing attention to its research and collections and by giving Americans every opportunity to share in this wealth of knowledge. For decades, we have attempted to pursue this goal by expanding our outreach initiatives into television and beyond into new technologies. However, due to lack of funding and expertise, this goal was never fully realized and as a result the Smithsonian's research and collections have been the focus of only the occasional television program or documentary film.

## Expanding Smithsonian Outreach Into Television Was Long Overdue

In the last few years, the Board of Regents determined that the Institution's significant foray into television was long overdue. They also realized that the only way to secure the investment and expertise necessary to establish a meaningful media presence was to

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partner with a large, established multimedia corporation. Given these requirements, only a limited number of media companies in the world were suitable for this kind of partnership. The process, which was overseen by the Smithsonian Board of Regents and the Board of Smithsonian Business Ventures, was fair and transparent. Only after much research and deliberation, and adherence to standard commercial business practices, was Showtime selected as the partner for this groundbreaking venture. In partnering with Showtime to create Smithsonian Networks, the Board of Regents created a significant opportunity to further the mission of the Institution. This opportunity is being realized in a number of ways.

#### Benefits of the Smithsonian/Showtime Agreement

First, the agreement already is generating an exponential growth in filming projects featuring Smithsonian content that ultimately will be available to millions of people via the venture's networks, the first of which is expected to be *Smithsonian On Demand*. Right now many of our museums are assisting in the production of dozens of new films featuring Smithsonian objects, Smithsonian curators, and Smithsonian buildings. Examples of these films are:

- ❖ *America's Hangar*: The story of the National Air and Space Museum, home to the largest collection of aircraft and spacecraft in the world.
- ❖ *Saving Stuff*: The Smithsonian's leading preservation expert and best-selling author Don Williams explains how to preserve family histories and heirlooms.

This current filming activity far exceeds anything we have seen in the past and is providing an unprecedented opportunity to share Smithsonian research and collections with a television audience. Also, this filming activity is already generating millions of dollars of work for many filmmakers, offering them the opportunity to produce and distribute new or existing films through Smithsonian Networks.

Second, due to Showtime's significant investment of capital, the agreement allows the Smithsonian to participate in the creation of television programming about the Institution in a way never possible before. The contract requires Smithsonian Networks to produce annually as many as 15 programs based on ideas proposed by the Smithsonian. These programs will feature areas of research and of the collections of the Smithsonian that the Institution especially wants to be presented to the public. Examples of these programs are:

- ❖ *Smithsonian Treasures*: A look at 150 unique objects in the Institution's collections that have defined American culture over the last 200 years. The film will tell the story behind objects such as Jackie Kennedy's inaugural gown, Muhammad Ali's boxing gloves, and Lewis and Clark's compass.
- ❖ *Ghost Cat: Saving the Clouded Leopard*: This film will spotlight the work of Smithsonian National Zoo veterinarian Dr. JoGayle Howard and her extraordinary reproductive research on the elusive Clouded Leopard. The film draws attention to the Smithsonian's role as a leading scientific institution that is pioneering procedures to save endangered species.

Third, the contract specifies that the Smithsonian has the right to review all programming to be aired by Smithsonian Networks and approve each program for factual accuracy and consistency with the reputation and integrity of the Smithsonian name. To facilitate these responsibilities, the Smithsonian has chosen to create a pan-Institutional committee made up of Smithsonian scientists and curators which is reviewing the rough and final cut of films for factual accuracy and consistency with the Institution's reputation. The committee also solicits and recommends ideas from around the Institution for the programs that the Smithsonian submits to the venture each year. In sum, the partnership with Showtime is enabling the Smithsonian to participate significantly in the creation of substantial amounts of television programming about the Institution for the first time in its history.

Fourth, the agreement provides substantial financial benefits for the Institution. As GAO confirmed, the agreement requires Showtime to make all of the financial investments in Smithsonian Networks and *Smithsonian On Demand*. Given the Institution's budget situation, it would have been impossible for the Smithsonian to expand its outreach into television and new technologies without this commitment. Only with Showtime's major investment of capital, and their accompanying technical and business expertise, will we be able to realize this goal. Furthermore, the contract's required licensing and royalty payments to the Institution are projected to generate millions in unrestricted trust revenue for the Institution, enabling it to better fulfill its mission by enabling improved and expanded research, exhibitions, and outreach programs.

*Access To Smithsonian Collections Is Not Affected; Restrictions On Use of Smithsonian Collections Are Minimal And Rare*

The substantial benefits provided by the establishment of Smithsonian Networks and *Smithsonian On Demand* far outweigh the cost of agreeing not to undertake certain activities. We understand that this contractual commitment has caused great concern for many researchers and filmmakers who have worked with the Institution in the past and hope to work with us in the future. We value these relationships and want these individuals and groups to know that, as in the past, they are always welcome to request access to our collections and they can continue to rely on the Smithsonian for our expertise and participation in their research or filming projects.

As is our responsibility, and has always been the case, the Institution maintains the right to restrict access to and use of our collections for many reasons (for example, if it would cause damage to an item in our collections, if it would interfere with the Institution's intended use for its collections, if it would be beyond the Institution's administrative or staffing resources, or if it would cause harm to the Institution's reputation). These usual restrictions aside, the arrangement with Showtime has no impact on "access" to our collections and staff, while "use" of our collections and staff by commercial filmmakers is only minimally affected. (In this context, "access" is the ability to view, research, read, or interview, while "use" refers to the ability to photograph or film with the intent to distribute commercially.)

Ultimately it is in our best interest to encourage production of good films about the Smithsonian, which is why we approve dozens of filming requests across the Institution each year. When we decline filming requests, we almost always do so because of issues that have nothing to do with the Showtime contract (for example, the topic suggested is

not within our expertise, the object sought is not in our collections, or the curator sought is not available at that time). As GAO's report confirms, the vast majority of requests to film at the Institution are being evaluated and approved as always: Requests from news and public affairs programs, requests for the production of academic, scholarly or curriculum-based programs, and requests relating to the production of programs that will not be distributed commercially are outside the scope of this contract and are thus unaffected; commercial television and film projects which intend to use Smithsonian content in a way that is only "incidental" to the overall program are not affected either.

The only programming which could be affected by the "non-compete" provision in the contract is certain types of programs which contain "more than incidental use" of Smithsonian content. Thus far, as we expected based on past experience, the number of programs that fall within this narrow category of competitive programs is tiny: as of November 30, 2006, only two out of 130 filming requests have been denied on these grounds. In addition, for those filmmakers who seek to feature a substantial amount of Smithsonian content in a program to be exhibited by a commercial distributor, there are several options: First, the filmmaker may decide after consulting with the Smithsonian to reduce the amount of Smithsonian content so that it is "incidental" to the overall film. Second, the filmmaker may choose to (but is not required to) contact Smithsonian Networks to see if it would be interested in working on and airing the film. Third, the Smithsonian may choose to allow the program as one of its annual "one-offs" (a program that is permitted under the contract even though it may compete with the venture but which the Smithsonian deems an important project and wants to allow). Thus far, we have selected a total of four programs as "one-offs" which will be counted against our allotments in the years in which these programs are expected to air. Based on our predictions, and supported by the actual requests we have received this year, it appears that the annual one-off allotment is sufficient to meet the demand for outside commercial projects featuring "more than incidental" Smithsonian content.

Only if these three outcomes are not viable – which occurs in only a very small number of cases as the data above support – would a filming proposal be rejected for reasons related to the contract. However, given these many options, we are confident that filmmakers will continue to work successfully with the Smithsonian for many years to come.

In sum, the contract with Showtime enables the Smithsonian to further its mission via the creation and distribution of hundreds of hours of quality television programming while approving each program's factual accuracy and consistency with the Institution's reputation, incurring no financial risk, generating millions in revenue, permitting traditional access to Smithsonian collections, and only rarely restricting the use of Smithsonian collections in competing filming projects. The Smithsonian Board of Regents weighed the advantages and constraints of the new partnership and concluded it was overwhelmingly more likely to allow the Institution to "increase and diffuse knowledge" and provide significantly increased benefits to the millions of Americans whom we inform, educate and enlighten each year.

#### Responses to Issues Raised by GAO

##### 1. Current Data Supports Expectations Based On Historical Review of Smithsonian Filming Requests

GAO contends in its report that the Smithsonian's historical review (2000-2005) of filming contracts was unreliable and not a good indicator of how the Showtime agreement will impact future filming requests. Specifically, GAO states that the true number of programs potentially affected during this period was not 17, as the Smithsonian contended in its initial statements, but was actually closer to 30.

The purpose of this historical analysis initially was to inform the Smithsonian's contract negotiations with Showtime, and later to provide some estimated figures for how future filming requests might be affected by the contract's "non-compete" provisions. We acknowledge that the statistics gleaned from this analysis were not perfect. One reason for the discrepancies noted by GAO is that in the past the process for filming requests was decentralized and unit-specific, an obstacle that no longer exists under the newly established central oversight for this process. (Beginning earlier this year, the Smithsonian created a pan-Institutional committee, overseen by the Smithsonian Office of Public Affairs and reporting to the Deputy Secretary, to track written filming requests at all of our museums and research centers and to review filming requests for compliance with the contract. This new centralized process, which was not in place during the period of this historical review, is enabling us to track more accurately and respond more consistently to requests to film at the Smithsonian.) In addition, the historical analysis was imperfect because it was based only on paper records of filming requests. In many cases the information missing from these paper records would have been available by talking with a filmmaker. Those personal interactions were not possible for this historical analysis, but are routine when a Smithsonian public information officer evaluates an actual filming request.

These explanations notwithstanding, it is important to note that whether this historical analysis yielded 17 or 30 potentially affected programs, the fact remains that the contract's potential impact on filming projects was minimal and that its actual impact to date, which is supported by the data cited above and by GAO, is minimal as well. It bears repeating that since the contract has been in place, only two projects have been denied as a result of the non-compete provisions. Even if, as GAO surmises, the demand for filming at the Institution increases, there is no reason to suspect that these requests will not mirror the type of requests we have received in the past and thus will be able to be accommodated as allowed by the contract. In fact we hope and expect that the number of filming requests will grow and that the increased exposure for our collections and research will outweigh the rare need to decline a request because it would compete with the venture. Therefore, although the specific number of potentially affected programs drawn from the historical analysis may have been imprecise, the conclusions drawn from this number are reliable and are supported by the current data.

## 2. Delayed Contract Announcement and Implementation Was Inevitable

GAO contends that the Smithsonian's delay in announcing the formation of the contract and in explaining and implementing new filming policies caused undue public confusion.

The public announcement of the Showtime contracts, and the explanation and implementation of new policies based on the contracts, was delayed after the contracts were signed in late December 2005. Part of the reason for this delay was the need to make initial decisions about the hiring of key staff. To announce the agreement and the formation of the venture before these basic elements were in place would have been

premature. In addition, the unique and complicated nature of this deal made it difficult for the Smithsonian to anticipate the kinds of revisions to its policies and procedures that would be needed to implement this pan-Institutional contract. Without prior experience in television production on this scale, it took some time for the Institution to decide how best to implement these new procedures and explain them to internal and external audiences.

These explanations notwithstanding, we may not have done enough initially to inform others about how the contract would affect existing Smithsonian policies and procedures. We have since addressed most of these misunderstandings with the groups most affected by the agreement (researchers and scientists, filmmakers, television networks, and Smithsonian staff) through numerous meetings, conversations and written correspondence. Nonetheless, we accept GAO's criticism here and will strive to be more informative and inclusive in the future as we seek input from and provide information to Congress, Smithsonian staff, the academic community and filmmakers.

### 3. Smithsonian Will Enhance Information Provided to Filmmakers and Other Interested Parties

GAO contends that the Smithsonian is not providing enough information to filmmakers and other interested parties about the contract's requirements and the rationale for filming request decisions.

Although the Smithsonian is not a federal agency, we strive for transparency and rationality in our policies and decisionmaking. Therefore we agree with GAO's "Recommendations for Executive Action" that we should enhance the information about the contract available on our website to filmmakers and others, and should commence a more detailed recording of the rationale for decisions on filming requests.

As to GAO's first recommendation, we are now documenting in more detail our decisions on filming applications. These decisions will help illustrate, among other things, how the term "incidental use" of Smithsonian content is being applied with respect to actual filming requests, and what kinds of programming proposals are being approved as oneoffs.

As to GAO's second recommendation, we have begun to update our websites to provide filmmakers and other interested parties with more information about what the contract means for filmmakers. This updated information — which will be available on both our public website ([www.smithsonian.org](http://www.smithsonian.org)) and our press website ([newsdesk.si.edu](http://newsdesk.si.edu)) — will include a revised and enhanced "Fact Sheet" about *Smithsonian On Demand* and descriptions of the kind of programming that will be shown on *Smithsonian On Demand*. In addition, we plan to add new "Frequently Asked Questions" specifically focused on the issues of how the contract operates and what impact it may have on filming requests. Lastly, we are crafting a short document that would describe the criteria the Institution may consider when evaluating whether a filming request would require "more than incidental use" of Smithsonian content. As additional questions and issues arise, we will continue to update and enhance the materials on our website so that they are current, useful, and informative.

Smithsonian Retains Flexibility to Evaluate Filming Requests on Case-by-Case Basis

In support of both of these recommendations, GAO expressed concern that filmmakers do not currently understand what constitutes "incidental use" of Smithsonian content as described by the contract. Throughout contract negotiations with Showtime, we indicated our preference to not adopt a rigid formula to define the term "incidental use," and have resisted attaching a specific run-time percentage to this assessment. We continue to believe that having a flexible standard which can be assessed on a case-by-case basis will enable a more thorough and tailored application of this requirement, ultimately benefiting both the Smithsonian and outside filmmakers.

As for how filmmakers will navigate this standard, it is important to note that the consideration of filming requests often takes the form of a dialogue between Smithsonian's Public Information Officers (PIOs) and filmmakers. During these discussions, a PIO can ask detailed questions about the filming request and may offer, among other things, advice as to how a particular request might be amended to increase the chances that it will comply with the contract's provisions. It is often easier for filmmakers to discuss the details of their specific project with a PIO rather than try to discern our likely response solely by reviewing written materials. We believe these conversations, combined with the enhanced information that GAO has recommended we add to our websites, will provide filmmakers with the information they need to adequately inform their requests for filming at the Smithsonian.

Thank you again for your detailed and balanced review of the issues surrounding this process. We hope that you found our responses forthcoming and we welcome the opportunity to work with you again in the future.

All the best,

A handwritten signature in black ink, appearing to be "S. M.", written in a cursive style.